

# ORIGINAL

## OPEN MEETING



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~~MEMORANDUM~~  
~~RECEIVED~~

Arizona Corporation Commission  
**DOCKETED**

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OCT 04 2007

DOCKETED BY	
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TO: THE COMMISSION

FROM: Utilities Division

DATE: October 4, 2007

2007 OCT -4 P 2:17

AZ CORP COMMISSION  
DOCKET CONTROL

RE: H<sub>2</sub>O, INC. - REQUEST FOR TIME EXTENSION TO COMPLY WITH DECISION NO. 64062 (DOCKET NOS. W-02234A-00-0371, WS-02987A-99-0583, WS-02987A-00-0618, W-02859A-00-0774, AND W-01395A-00-0784)

In Decision No. 63960, dated September 4, 2001, and Decision No. 64062, dated October 4, 2001, the Arizona Corporation Commission ("Commission") granted certain extensions of the Certificates of Convenience and Necessity ("CC&Ns") of H<sub>2</sub>O, Inc. ("H<sub>2</sub>O" or "Company"), Diversified Water Utilities, Inc. ("Diversified"), Queen Creek Water Company ("Queen Creek") and Johnson Utilities, L.L.C. ("Johnson").

The Decision approved the extension of H<sub>2</sub>O into Parcels 15, 16, 17, 18, and 22 along with the entire Section 13 in Township 2 South, Range 7 East in Pinal County, Arizona. The Commission also required:

1. That H<sub>2</sub>O file, for each of the two years following the decision, documentation that H<sub>2</sub>O was in compliance with ADEQ.
2. That H<sub>2</sub>O file, within two years of the effective date of the decision, a copy of the developers' Certificates of Assured Water Supply ("CAWS") for the respective parcels and section.
3. That H<sub>2</sub>O file within two years of the effective date of the Decision, a copy of its Certificate of Approval to Construct for the main extension to the Combs School.
4. That H<sub>2</sub>O file within two years of the effective date of the Decision, a copy of its Certificate of Approval to Construct and Certificates of Approval of Construction for each of the respective approved parcels.
5. That H<sub>2</sub>O file within two years of the effective date of the Decision, a copy of its franchise from Pinal County for the extension areas.
6. That H<sub>2</sub>O file, within two years of the effective date of the Decision, a request for a Certificate review after which, Staff, at its discretion, shall perform a physical plant inspection to determine the extent to which development has commenced. The Certificate review should include the number of customers, the amount of plant installed,

the number of gallons sold and the amount of revenue related to the extension area. The review should also include the Master Plan showing all plant installed and customer location and any other information Staff deems relevant. After H<sub>2</sub>O's request for review, Staff shall have 120 days to file a report containing one of the following three recommendations: 1. Final approval of the Certificate for all parcels approved; 2. Final approval of the Certificate for portions of the parcels with cancellation of the undeveloped portions; 3. Disapproval of the Certificate for the parcels approved.

On September 11, 2003, H<sub>2</sub>O filed a request for an extension of time to comply with Decision No. 64062 and requested a two-year extension of time to file copies of the developers' CAWS and Certificates of Approval to Construct ("CAC"). On October 30, 2003, the Commission issued a Procedural Order approving a two-year extension to comply with Decision No. 63960 as amended by Decision No. 64062. Thus, the compliance date for the Decision was moved to from October 4, 2003 to October 4, 2005. The Procedural Order also required that "good cause" be shown before any further time extensions be granted.

On July 5, 2006, Staff contacted H<sub>2</sub>O regarding compliance issues. The Company filed a letter dated and docketed August 9, 2006, responding to the compliance inquiry and requesting an extension of the filing date for the Approvals to Construct, the Approvals of Construction and the Certificates of Assured Water Supply for Parcels 14, 16, 17, and 18 and Section 13 until December 31, 2007. The Company believes, and Staff has verified, that the Company is in compliance for Parcels 15 and 22.

On September 1, 2006, in an effort to determine if there was still a need or request for service in the areas approved in Decision No. 64062, Staff sent H<sub>2</sub>O a letter requesting "signed statements from the developers in each parcel and Section 13 which describes the progress each developer has made toward acquiring the necessary permits, certificates, etc., the physical progress made toward development and when the first customer in each development is expected to be served." Staff requested the information be provided by October 1, 2006.

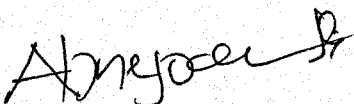
On February 22, 2007, H<sub>2</sub>O met with Staff regarding the status of development in the parcels and sections for which H<sub>2</sub>O received approval to extend its CC&N in Decision No. 64062, dated October 4, 2001. The meeting concluded with assurances from H<sub>2</sub>O that a written summary of the status of development in each approved area would be shortly forthcoming. Soon thereafter, an email was sent by Staff to H<sub>2</sub>O urging the production of the requested information.

On May 23, 2007, Staff again requested detail from the Company regarding the need for service. The Company replied to Staff's request on June 6, 2007. Staff docketed the Company's response with its memorandum for the time extension on July 26, 2007. The response contains letters from developers and from the Church of Jesus Christ of Latter Day Saints indicating that they desire to remain in H<sub>2</sub>O's service territory. The Commission has received no correspondence or comments from Diversified, Queen Creek or Johnson, the parties in the original CC&N docket, indicating any disagreement with an extension.

The primary reason that the Company has not been able to file the CAWS or the CACs for most of the parcels is the amount of time it has taken the developers to receive approvals from Pinal County. Other reasons include a slight down-turn in the real estate market (although, H<sub>2</sub>O is hooking up approximately 100 new customers each month) and developers discussions with Williams-Gateway Airport regarding flight paths.

On July 18, 2007, Staff members visited the Company and toured the extension area territory with representatives of the Company. It was apparent that development was progressing at different rates in different Parcels. It was also apparent that the Company had installed off-site plant facilities, and had sized storage tanks and lines to serve current customers and customers in the areas not yet developed. Staff also conducted a certificate review of the Company's extension area. The review noted significant growth in the number of customers, amount of plant installed, number of gallons sold and increased revenue.

Staff has reviewed the Company's request for an extension of the compliance dates set forth in Decision No. 64062 and believes that the Company's inability to meet the current compliance dates is related solely to the problems of the developers. Staff believes that granting an additional extension request would not be productive. Instead, as provided for in Decision No. 64062, Staff has reviewed and evaluated each of the granted Parcels and is recommending that final approval of the Certificate for all Parcels be approved as provided for in Decision No. 63960.

for 

Ernest G. Johnson  
Director  
Utilities Division

EGJ:KB:lh\CH

Originator: Kimberly Battista

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

MIKE GLEASON  
Chairman  
WILLIAM A. MUNDELL  
Commissioner  
JEFF HATCH-MILLER  
Commissioner  
KRISTIN K. MAYES  
Commissioner  
GARY PIERCE  
Commissioner

IN THE MATTER OF H<sub>2</sub>O, INC.'S  
REQUEST FOR TIME EXTENSION TO  
COMPLY WITH DECISION NO. 64062

DOCKET NOS. W-02234A-00-0371  
WS-02987A-99-0583  
WS-02987A-00-0618  
W-02859A-00-0774  
W-01395A-00-0784

DECISION NO. \_\_\_\_\_  
ORDER

Open Meeting  
October 23 and 24, 2007  
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. H<sub>2</sub>O, Inc. ("H<sub>2</sub>O" or "Company") is engaged in providing water within portions of Arizona, pursuant to authority granted by the Arizona Corporation Commission ("Commission).
2. In Decision No. 63960, dated September 4, 2001, and Decision No. 64062, dated October 4, 2001, the Commission granted certain extensions of the Certificates of Convenience and Necessity ("CC&Ns") of H<sub>2</sub>O, Diversified Water Utilities, Inc. ("Diversified"), Queen Creek Water Company ("Queen Creek") and Johnson Utilities, L.L.C. ("Johnson").
3. The Decision approved the extension of H<sub>2</sub>O into Parcels 15, 16, 17, 18, and 22 along with the entire Section 13 in Township 2 South, Range 7 East in Pinal County, Arizona. The Commission also required:  
...

- 1 • That H<sub>2</sub>O file, for each of the two years following the decision, documentation that  
2 H<sub>2</sub>O was in compliance with ADEQ.
- 3 • That H<sub>2</sub>O file, within two years of the effective date of the decision, a copy of the  
4 developers' Certificates of Assured Water Supply ("CAWS") for the respective  
5 parcels and section.
- 6 • That H<sub>2</sub>O file within two years of the effective date of the Decision, a copy of its  
7 Certificate of Approval to Construct for the main extension to the Combs School.
- 8 • That H<sub>2</sub>O file within two years of the effective date of the Decision, a copy of its  
9 Certificate of Approval to Construct and Certificates of Approval of Construction for  
10 each of the respective approved parcels.
- 11 • That H<sub>2</sub>O file within two years of the effective date of the Decision, a copy of its  
12 franchise from Pinal County for the extension areas.
- 13 • That H<sub>2</sub>O file, within two years of the effective date of the Decision, a request for a  
14 Certificate review after which, Staff, at its discretion, shall perform a physical plant  
15 inspection to determine the extent to which development has commenced. The  
16 Certificate review should include the number of customers, the amount of plant  
17 installed, the number of gallons sold and the amount of revenue related to the  
18 extension area. The review should also include the Master Plan showing all plant  
19 installed and customer location and any other information Staff deems relevant. After  
20 H<sub>2</sub>O's request for review, Staff shall have 120 days to file a report containing one of  
21 the following three recommendations: 1. Final approval of the Certificate for all  
22 parcels approved; 2. Final approval of the Certificate for portions of the parcels with  
23 cancellation of the undeveloped portions; 3. Disapproval of the Certificate for the  
24 parcels approved.

19 4. On September 11, 2003, H<sub>2</sub>O filed a request for an extension of time to comply  
20 with Decision No. 64062 and requested a two-year extension of time to file copies of the  
21 developers' CAWS and Certificates of Approval to Construct ("CAC").

22 5. On October 30, 2003, the Commission issued a Procedural Order approving a two-  
23 year extension to comply with Decision No. 63960 as amended by Decision No. 64062. Thus, the  
24 compliance date for the Decision was moved to from October 4, 2003 to October 4, 2005. The  
25 Procedural Order also required that "good cause" be shown before any further time extensions be  
26 granted.

27 6. On July 5, 2006, Staff contacted H<sub>2</sub>O regarding compliance issues. The Company  
28 filed a letter dated and docketed August 9, 2006, responding to the compliance inquiry and

1 requesting an extension of the filing date for the Approvals to Construct, the Approvals of  
2 Construction and the Certificates of Assured Water Supply for Parcels 14, 16, 17, and 18 and  
3 Section 13 until December 31, 2007. The Company believes, and Staff has verified, that the  
4 Company is in compliance for Parcels 15 and 22.

5 7. On September 1, 2006, in an effort to determine if there was still a need or request  
6 for service in the areas approved in Decision No. 64062, Staff sent H<sub>2</sub>O a letter requesting "signed  
7 statements from the developers in each parcel and Section 13 which describes the progress each  
8 developer has made toward acquiring the necessary permits, certificates, etc., the physical progress  
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10 served." Staff requested the information be provided by October 1, 2006.

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12 the parcels and sections for which H<sub>2</sub>O received approval to extend its CC&N in Decision  
13 No. 64062, dated October 4, 2001. The meeting concluded with assurances from H<sub>2</sub>O that a  
14 written summary of the status of development in each approved area would be shortly  
15 forthcoming. Soon thereafter, an email was sent by Staff to H<sub>2</sub>O urging the production of the  
16 requested information.

17 9. On May 23, 2007, Staff again requested detail from the Company regarding the  
18 need for service. The Company replied to Staff's request on June 6, 2007. Staff docketed the  
19 Company's response with its memorandum for the time extension on July 26, 2007. The response  
20 contains letters from developers and from the Church of Jesus Christ of Latter Day Saints  
21 indicating that they desire to remain in H<sub>2</sub>O's service territory. The Commission has received no  
22 correspondence or comments from Diversified, Queen Creek or Johnson, the parties in the original  
23 CC&N docket, indicating any disagreement with an extension.

24 10. On July 18, 2007, Staff members visited the Company and toured the extension  
25 area territory with representatives of the Company. It was apparent that development was  
26 progressing at different rates in different parcels. It was also apparent that the Company had  
27 installed off-site plant facilities, and had sized storage tanks and lines to serve current customers

28 ...

1 and customers in the areas not yet developed. Staff also conducted a certificate review of the  
2 Company's extension area. The review noted significant growth in the number of customers,  
3 amount of plant installed, number of gallons sold and increased revenue.

4 11. The primary reason that the Company has not been able to file the CAWS or the  
5 CACs for most of the parcels is the amount of time it has taken the developers to receive approvals  
6 from Pinal County. Other reasons include a slight down-turn in the real estate market (although,  
7 H<sub>2</sub>O is hooking up approximately 100 new customers each month) and developers discussions  
8 with Williams-Gateway Airport regarding flight paths.

9 12. Staff has reviewed the Company's request for an extension of the compliance dates  
10 set forth in Decision No. 64062 and believes that the Company's inability to meet the current  
11 compliance dates is related solely to the problems of the developers. Staff believes that granting  
12 an additional extension request would not be productive. Instead, as provided for in Decision  
13 No. 64062, Staff has reviewed and evaluated each of the granted parcels, i.e., evidence of  
14 development such as subdivision platting, zoning, engineering design, master-planning, and  
15 construction of plant facilities, and is recommending that final approval of the Certificate for all  
16 parcels be approved as provided for in Decision No. 63960.

17 13. Staff recommends that the Company file all outstanding compliance requirements  
18 of Decision No. 64062 when they are received.

#### 19 CONCLUSIONS OF LAW

20 1. H<sub>2</sub>O, Inc. is a public service corporation within the meaning of Article XV of the  
21 Arizona Constitution and Arizona Revised Statutes §§ 40-252, 40-281 and 40-282.

22 2. The Commission has jurisdiction over H<sub>2</sub>O, Inc. and of the subject matter of the  
23 application.

24 3. Notice of the application as described herein was given in the manner prescribed by  
25 law.

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ORDER

IT IS THEREFORE ORDERED, as provided for in Decision No. 63960, that final approval of the Certificate for all parcels be approved.

IT IS THEREFORE ORDERED that the outstanding compliance requirements of Decision No. 64062 shall remain in effect and H2O shall file the required documentation when received.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

**BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

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CHAIRMAN

COMMISSIONER

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COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I DEAN S. MILLER, Interim Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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DEAN S. MILLER  
Interim Executive Director

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

EGJ:KB:lh\CH



1 SERVICE LIST FOR: H<sub>2</sub>O, Inc.

2 DOCKET NOS. W-02234A-00-0371, et al.

3 Mr. Richard Sallquist  
4 Sallquist, Drummond & O'Connor, P.C.  
4500 South Lakeshore Drive, Suite 339  
5 Tempe, Arizona 85282

6 Mr. Charles A. Bischoff  
7 Jorden & Bischoff, PLC  
7272 East Indian School Road, Suite 205  
8 Scottsdale, Arizona 85251

9 Mr. William P. Sullivan  
Curtis, Goodwin, Sullivan, Udall & Schwab, PLC  
10 501 East Thomas Road  
11 Phoenix, Arizona 85012-3205

12 Mr. Ernest G. Johnson  
Director, Utilities Division  
13 Arizona Corporation Commission  
1200 West Washington Street  
14 Phoenix, Arizona 85007

15 Mr. Christopher C. Kempley  
16 Chief Counsel, Legal Division  
Arizona Corporation Commission  
17 1200 West Washington Street  
18 Phoenix, Arizona 85007